

Before the  
Administrative Hearing Commission  
State of Missouri



EXTENDED HANDS, LLC,

Petitioner,

vs.

DEPARTMENT OF SOCIAL SERVICES,  
MISSOURI MEDICAID AUDIT AND  
COMPLIANCE UNIT,

Respondent.

No. 13-0969 SP

**DECISION**

We dismiss Extended Hands, LLC's ("Extended Hands") complaint because it was untimely filed and we do not have jurisdiction to hear it.

**Procedure**

On June 4, 2013, Extended Hands filed a complaint appealing a final decision of the Department of Social Services, Missouri Medicaid Audit and Compliance Unit ("MMAC"). On July 3, 2013, MMAC filed a motion to dismiss the complaint. Extended Hands responded to the motion on July 23, 2013.

MMAC attached exhibits to its motion to dismiss. We therefore treat MMAC's motion as a motion for summary decision.<sup>1</sup>

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<sup>1</sup> 1 CSR 15-3.346(4)(A); 1 CSR 15-3.446(6). All references to the CSR are to the Missouri Code of State Regulations as current with amendments included in the Missouri Register through the most recent update.

## **Findings of Fact**

1. On May 2, 2013, MMAC sent a final decision letter to Extended Hands determining Extended Hands had erroneously billed \$10,513.44. The letter was sent by MMAC to Extended Hands by certified mail.
2. The letter contained an explanation of Extended Hands' right to appeal MMAC's decision to this Commission within thirty days of mailing or delivery of the notice, whichever is earlier.
3. Thirty days after May 2, 2013 was June 1, 2013, a Saturday.
4. Extended Hands faxed a complaint to this Commission. We received the fax at 18:28 (6:28 PM) on Monday, June 3, 2013.

## **Conclusions of Law**

We have jurisdiction over appeals of the MMAC's final decisions.<sup>2</sup> Our jurisdiction, however, has been limited by the General Assembly to only those appeals filed within a specified period of time. Section 208.156.8 provides:

Any person authorized under section 208.153 to provide services for which benefit payments are authorized under section 208.152 and who is entitled to a hearing as provided for in the preceding sections shall have thirty days from the date of mailing or delivery of a decision of the department of social services or its designated division in which to file his petition for review with the administrative hearing commission[.]

The MMAC mailed the notice on May 2, 2013, via certified mail. When a statute provides for the time for appeal to run upon mailing or delivery and the MMAC uses mailing, the time for appeal begins on the date on which the notice was mailed.<sup>3</sup> The thirty-day period ended

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<sup>2</sup> Section 208.156.3. Statutory references are to the 2000 version of the Missouri Revised Statutes unless otherwise noted.

<sup>3</sup> *Fayette No. 1, Inc. v. Missouri Dept. of Social Services*, 853 S.W.2d 393, 396 (Mo. App., W.D. 1993); see also *R.B. Industries, Inc. v. Goldberg*, 601 S.W.2d 5, 6-7 (Mo. 1980). In *R.B. Industries*, the Supreme Court held that "based solely on the language of [§] 536.110.1 and Rule 100.04(a), the thirty-day period began to run on January 23, 1979, the date of mailing. To hold otherwise would ... render the use of the word 'mailing' meaningless." The version of § 536.110 at issue in *R.B. Industries* had the same "mailing or delivery" language that § 208.156.8 currently has. We find the reasoning of *R.B. Industries* persuasive.

on June 1, 2013, a Saturday. By operation of law, Extended Hands had until the following Monday, June 3, 2013, to file its complaint.<sup>4</sup>

Extended Hands filed its complaint by fax on Monday, June 3, 2013, at 6:28 PM. Our regulation 1 CSR 15-3.290(1)(B) permits fax filing, but states, “if a document arrives by fax after 5:00 p.m. and before 12:00 midnight ... it is filed on the commission’s next business day, unless the commission orders otherwise.” Extended Hands’ faxed complaint arrived at 6:28 PM, which is after 5:00 PM. In accordance with our regulation, the complaint was deemed filed on June 4, 2013, the next business day. Thus, Extended Hands’ petition was filed one day out of time.

Failure to comply with statutory time limitations for appeal from an administrative agency decision results in the lapse of subject matter jurisdiction and the loss of right of appeal.<sup>5</sup> We cannot decide claims filed outside the statutory time limit;<sup>6</sup> we can only exercise our inherent power to dismiss the complaint for lack of jurisdiction.<sup>7</sup>

### Summary

We grant the MMAC’s motion to dismiss the complaint and cancel the hearing.

SO ORDERED on July 29, 2013.

/s/ Mary E. Nelson  
MARY E. NELSON  
Commissioner

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<sup>4</sup> Section 1.040; Section 621.205.2 .

<sup>5</sup> *Daly v. Warner-Jenkison Mfg. Co.*, 92 S.W.3d 319, 322-23 (Mo. App., E.D. 2002) (citing *Fayette No. 1, Inc.*, 853 S.W.2d at 396.)

<sup>6</sup> *Springfield Park Cent. Hosp. v. Director of Revenue*, 643 S.W.2d 599, 600 (Mo. 1983).

<sup>7</sup> *Oberreiter v. Fullbright Trucking*, 24 S.W.3d 727, 729 (Mo. App., E.D. 2000).